

Kelly

**confidential**  
**fax**

*For Interview  
Purposes only*

**To:** Examiner Philip Gabler  
**Fax Number:** +1 (571) 273-6038

**From:** Mark Kelly  
**Fax Number:** 414-967-1347  
**Business Phone:** 414-967-1347  
**Home Phone:**

**Pages:** 12  
**Date/Time:** 11/17/2006 12:59:33 PM  
**Subject:** Proposed Amendment, S.N. 10/774,982

Examiner Gabler:

Attached is a proposed amendment in response to the Office Action mailed on September 5, 2006. I will telephone you on Tuesday of next week to follow up. If it is more convenient, please do not hesitate to call me when you have the file before you. Thank you for your help and I look forward to speaking with you.

Best regards,

Atty. Mark Kelly  
414-967-1347  
or 414-431-5351

**DRAFT COPY**

*Please Do Not Enter  
11/21/06*

Serial No. 10/774,982

Page 1 of 11

First Named Inventor	Fredrickson, Kurt	<u><b>AMENDMENT AND RESPONSE TO SECOND NON-FINAL OFFICE ACTION</b></u>
Serial No.	10/774,982	
Confirmation No.	9597	
Filing Date	February 9, 2004	
Group Art Unit	3637	
Examiner Name	Gabler, Philip Francis	
Attorney Docket No.	KF-2004-01	
Title: ANGULARLY ADJUSTABLE POST MOUNT		

Commissioner for Patents  
Washington, D.C. 20231

The Office Action mailed on September 5, 2006 has been received and carefully reviewed. Consideration of the amendments and remarks set forth below is respectfully requested.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 2 of 11

**Amendments to the Claims**

1. (currently amended) A mounting apparatus for a post, comprising:  
  
a stationary portion having an attachment rod secured to a substructure and extending from the substructure in a direction defining a first fixed axis;  
  
a post base positioned above the stationary portion comprising a post mounting surface and a curved downwardly facing bottom surface, the curved downwardly facing bottom surface having a ~~slotted aperture~~ slot through which the attachment rod extends;  
  
a lower bearing positioned beneath the post base, the lower bearing comprising a curved upwardly facing surface substantially corresponding in curvature to the curved downwardly facing bottom surface of the post base and in slidable engagement therewith, and providing a ~~central aperture~~ center hole through which the attachment rod extends; and  
  
means to releasably secure the post base to the stationary portion;  
  
wherein the post base may be rotated about the first fixed and angularly offset therefrom, to enable a mounted post to be angularly aligned and secured.
2. (currently amended) The mounting apparatus of claim 1 wherein the curved downwardly facing bottom surface is concave and the curved upwardly facing surface is convex.
3. (original) The mounting apparatus of claim 2 wherein the curved surfaces comprise substantially equivalent radiuses of curvature.
4. (currently amended) The mounting apparatus of claim 1 wherein the ~~upper and lower bearing~~ curved surfaces comprise semispherical curved surfaces.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 3 of 11

5. (original) The mounting apparatus of claim 1 wherein the post base comprises an exterior sidewall dimensioned to engage an inside wall of the post to be mounted.
6. (original) The mounting apparatus of claim 5 wherein the exterior sidewall comprises a horizontal cross section that is generally round and dimensioned to engage an inside wall of a round tubular post.
7. (original) The mounting apparatus of claim 1 wherein the means to releasably secure the post base to the stationary portion comprises a fastener that engages the attachment rod.
8. (original) The mounting apparatus of claim 1 wherein the means to releasably secure the post base to the stationary portion comprises a threading engagement of the attachment rod in the substructure.
9. (original) The mounting apparatus of claim 1 wherein the stationary portion further comprises an anchor secured to the substructure to which the attachment rod is secured.
10. (original) The mounting apparatus of claim 9 wherein the anchor is comprised of a concrete or cement structure in which the attachment rod has been embedded.
11. (original) The mounting apparatus of claim 1 wherein the post base and lower bearing are comprised of gray iron castings.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 4 of 11

12. (original) The mounting apparatus of claim 1 wherein the post base is configured to mount a post that will break away from the mount in response to the force of a vehicle impact.

13. (original) The mounting apparatus of claim 12 wherein the post base is adapted to break away from the attachment rod in response to the force of a direct vehicle impact to the post base.

14. (currently amended) A mounting apparatus for a post, comprising:

- a mounting surface secured to a substructure; and
- a threaded bolt secured to the substructure and protruding from the mounting surface in a direction defining a ~~first~~ fixed axis;
- a substantially disc shaped lower bearing positioned above the mounting surface, the disc shaped lower bearing comprising:
  - a bottom surface,
  - a smoothly curved top surface, and
  - ~~an aperture~~ a hole extending through the center of the disk to admit the threaded bolt;
- a substantially cup shaped post base positioned above the lower bearing, the post base comprising:
  - an exterior cylindrical side wall dimensioned to engage an inner sidewall of a tubular post, and
  - an exterior bottom surface comprising a curved surface adapted to slidably engage the top surface of the lower bearing and having an elongate slot extending therethrough to admit the threaded bolt; and
  - a fastener that engages the bolt to releasably secure the mount in position;

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 5 of 11

wherein a mounted post may be angularly offset from the ~~first~~ fixed axis in a desired direction by translating the bolt in the ~~elongate aperture slot~~ and rotating the post about the ~~first~~ fixed axis.

15. (original) The mounting apparatus of claim 14 wherein the top surface of the lower bearing is convex and the bottom surface of the post base is concave and said surfaces comprise approximately equal radiuses of curvature.

16. (original) The mounting apparatus of claim 15 wherein the convex and concave surfaces are semispherical.

17. (original) The mounting apparatus of claim 14 wherein the post base is configured to mount a post that will break away from the mount in response to a predetermined impact force.

18. (original) The mounting apparatus of claim 17 wherein the post base is adapted to break away from the attachment rod in response to a predetermined impact force.

19. (currently amended) A mounting apparatus for a post, comprising:  
attachment means secured to a substructure, the attachment means extending from the substructure in a direction defining a first fixed axis;  
post mounting means comprising one or more surfaces to which a tubular post may be attached and a semispherical joint pivotable about the first fixed axis and angularly offsettable therefrom within a predetermined range; and  
means for releasably securing the post mounting means to the attachment means.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 6 of 11

20. The mounting apparatus of claim 19 wherein the surface to which the post may be attached comprises an outwardly facing cylindrical wall.

21. The mounting apparatus of claim 19 wherein the post mounting means is configured to mount a post that will break away from the mount in response to a predetermined impact force.

22. The mounting apparatus of claim 21 wherein the post mounting means is adapted to break away from the attachment means in response to a predetermined impact force.

23. (currently amended) A method for mounting a post, comprising:

providing an attachment rod secured to a substructure on one end, the other end extending away from the substructure in a direction defining a first fixed axis;

mounting a bearing to the substructure, the bearing having an upwardly facing semispherical curved surface concentric about the first fixed axis and an axial hole to admit the attachment rod;

mounting a post to a post base, the post base comprising a downwardly facing semispherical surface corresponding in curvature to the upwardly facing curved surface of the bearing, and comprising a slot ~~aperture~~ therethrough, the slot extending from the center in a radially outward direction;

mounting the post base over the bearing by passing the attachment rod through the slot ~~aperture~~ of the post base,

angularly adjusting the attitude of the post /post base to compensate for any vertical misalignment in the first fixed axis by pivoting the post base about the first axis and positioning the attachment rod in the slot ~~aperture~~ to offset the center of the post base from the first fixed axis until the post is vertical; and

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 7 of 11

securing the post in position by engaging a fastener to the attachment rod and tightening the fastener until the post is locked in position.

24. (currently amended) An adjustable post mount comprising:

a stationary portion that provides an attachment rod secured to a substructure such as the ground and which extends therefrom in a direction defining a ~~first~~ fixed axis, an adjustable post base that rests on the stationary portion, the post base comprising a semispherically curved bottom bearing surface having a ~~slotted aperture~~ slot therethrough, to receive the attachment rod;

a spacer interposed between the post base and the stationary portion, comprising a semispherical curved surface corresponding to the bottom surface of the post base and a center ~~aperture~~ hole through which the attachment rod extends, semispherical curved surface in engagement with the bottom surface of the post base and forming joint to enable angular adjustment of the post base with respect to the ~~first~~ fixed axis to offset a vertical misalignment in the stationary portion within a predetermined range;

a fastener securable to the attachment rod wherein the adjustable post mount can be releasably locked into position and can be readjusted.

25. The adjustable post mount of claim 24 wherein the post base is configured to mount a post that will break away from the mount in response to a predetermined impact force.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER



Serial No. 10/774,982

Page 8 of 11

### Remarks

#### Claim Objections

Claim 2 was objected to on the basis of an informality: missing the definite article “the” before the word “curved.” The claim has been amended to correct the informality.

#### Claim Rejections Under 35 U.S.C. §112

Claims 4 and 14-18 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims have been amended accordingly. Specifically, claim 4 was rejected as lacking proper antecedent basis for the term “upper ... bearing [surface].” The claim has been amended to change the reference from “upper and lower bearing surfaces” to “curved surfaces.” Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112 and allowance of claim 4.

Independent claim 14 was rejected as unclear based on use of the term “the elongate aperture.” Claims 15-18 were also rejected as indefinite based on the basis that the claims depend from claim 14. The term “aperture” has been changed to hole and the term “elongate aperture” has been changed to slot to better distinguish between the two claim limitations. Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112 and allowance of claims 14-18.

#### Claim Rejections Under 35 U.S.C. §102

Claims 1-5, 7-10, 19, and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by West (U.S. Patent No. 5,404,682) (“West”). West describes an “adjustable mounting for a post system” that includes a ball section that can be fitted onto a ground stake that is to be driven into the earth, can be mounted to cement, or the like. The ball portion is for positioning in a seat that is for coupling to a post insert or into a post end. Both the post and post insert attitude to the vertical is adjustable and is maintained by a mounting that utilizes single nut and bolt fastener.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 9 of 11

In the first embodiment described in the West patent, a ball section is to fit into a seat that has a hemispherical inner surface with the components positioned and held together by a single bolt coupling. The bolt is fitted through a **hole** formed through the seat and ball section, which ball section hole is **tapered** from a bottom end outwardly to a top end **to allow for the bolt to tilt** across the top end of the hole. So arranged, the seat is positionable across the ball section surface and a nut is provided for turning, within the post insert, over a threaded end of the bolt passed through the seat and ball section clamping the surfaces together. Col. 2 lines 25-38, Fig. 1. An alternative embodiment describes the use of a pair of sloping or tapered washers that are center holed to fit together as a stack and receive a bolt therethrough. Which bolt is also fitted through holes formed in opposing plates that are secured respectively, across the post insert bottom and the ground stake or anchor top surface. The washers fitted over one another have their tapered surface arranged juxtaposition to one another. The rotation of one of which washers over the other therefore increases or decreases, respectively, the thickness of the opposite washer stack edge. The washer stack top surface can therefore be angled to the vertical relative to its lower surface. Col. 2 lines 42-54, Figs. 4-8. A further alternative embodiment involves a ball and seat combination, like that of the first embodiment. The ball section that is for mounting through a plate to a ground stake is arranged to pass a mounting bolt through a center hole thereof to through a seat **to provide a tilt from the vertical of that mounting bolt**. Col. 2, line 67 to Col. 3, line 5. Yet another alternative embodiment described at Col. 8, lines 1-15 and shown in Fig. 1C is a rigid mounting that does not allow for adjustment of the angle of the post at all.

In order to adjust the angle of a mounted post, West requires **a tilt from the vertical of the mounting bolt**. If the bolt does not tilt, West's mount is not adjustable. Indeed, West teaches away from angular adjustment that does not involve tilting of the mounting bolt by inclusion of the embodiment of Fig. 1C in which the bolt has been set in cement and describing that embodiment as "rigidly mounting the post..." Col. 8, lines 13-14. In contrast to West, a tilting bolt is not needed to obtain angular adjustment of posts mounted according to embodiments of the present invention. Rather the invention as described in claim 1 (as amended) calls for:

This is a Proposed Amendment for discussion purposes. **PLEASE DO NOT ENTER**

Serial No. 10/774,982

Page 10 of 11

A mounting apparatus for a post which includes a *stationary* portion having an *attachment rod secured to a substructure* and extending from the substructure in a direction defining a *fixed* axis; a post base positioned above the stationary portion comprising a post mounting surface and a curved downwardly facing bottom surface, the curved downwardly facing bottom surface having a slot through which the attachment rod extends; a lower bearing positioned beneath the post base, the lower bearing comprising a curved upwardly facing surface substantially corresponding in curvature to the curved downwardly facing bottom surface of the post base and in slidable engagement therewith, and providing a center hole through which the attachment rod extends; and means to releasably secure the post base to the stationary portion; wherein the post base may be rotated about the fixed and angularly offset therefrom, to enable a mounted post to be angularly aligned and secured.

West fails to teach or suggest a stationary portion as claimed herein because the bolt in West *must tilt*, *i.e.*, be loosely coupled into the ground, to angularly adjust a mounted post. West simply fails to appreciate the problems bound to result from using a bolt that loosely couples into the ground such as accumulation of water in the coupling, damage from freeze thaw cycles, corrosion and the like. In contrast, the inventor herein, who has worked or supervised others in the field of municipal maintenance through more than 35 harsh Wisconsin winters, appreciates all too well the problems encountered over time in setting marker posts, delineators and the like in outdoor environments. Thus, the invention claimed herein includes *an attachment rod secured to a substructure* and extending from the substructure in a direction defining a *fixed* axis. The claimed invention accomplishes angular adjustability without the need for moving parts in the stationary portion. The stationary portion is simple by design in order to minimize damage from freeze thaw cycles, corrosion, and other wear and tear. No other reference makes up for this deficiency in West. Applicant therefore respectfully requests reconsideration of the rejections of claims 1-5, 7-10, 19 and 24 and allowance. Claims 6, 11-18 depend from the above claims and are therefore allowable for the same reasons. Independent claim 23 was rejected under 35 U.S.C. §103 as being unpatentable over West and is also allowable for the same reasons.

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER

Serial No. 10/774,982

Page 11 of 11

For the above-cited reasons, applicant respectfully requests that the Examiner allow the claims of the present application. The Examiner is invited to contact applicant's representative at the number shown below if there are any questions regarding this application or if prosecution of this application may be assisted thereby.

Respectfully submitted,

Date: November 16, 2006

Mark D. Kelly  
Reg. No. 39,467

Attorney for Applicant  
5401 N. Shoreland Ave.  
Whitefish Bay, WI 53217  
Tel: 414-431-5351 or  
414-967-1347

This is a Proposed Amendment for discussion purposes. PLEASE DO NOT ENTER